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SOUTHERN DISTRICT OF IA

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

Anthony V. DeLisle Sr.
3513 Belmar Drive
Des Moines, Ia. 50317

Plaintiff,

vs.

Roberta Myers / Myers Properties
6554 Center Street
Des Moines, Ia. 50312

Defendant.

CASE NO. 4:03-CV-10690

Complaint, pleadings and request for jurisdictional authority with brief for discovery request.

(Jury Requested)

COMPLAINT

This petitioner comes now pro-se and in forma pauperis before this court to request constitutional protections not believed afforded this appellant in a previous small claims hearing. Petitioner also request removal, pursuant to Title 28 U.S.C. Section 1441 (a)(b)&(c), to this courts jurisdiction and authority in providing the appropriate hearings and trial necessary in determining the appropriate remedies reasonable in a federal breach of contract and other contentions. Plaintiff also wishes to present and establish further evidence in foundation of the included contentions of fraudulent and negligent misrepresentation and also that of gross negligence while including evidence of the defendants willful and reckless disregard for the truth.

Both parties partnered under a section eight federal lease agreement that included responsibilities under the US Housing Act of 1937, the Fair Housing Act and title VI, sec. 504 of the Rehabilitation Act of 1973 (see federal lease contract in evidence) along with other state and local laws. The defending party immediately breached said partnership/contract with a failure to provide essential services required under said contract. Further and more severe safety concerns became present and the plaintiffs immediately gave appropriate notice to the landlord for her assistance. Plaintiff Exhibit 1 in the previous hearing established a demand letter mailed to the landlord requiring abatement to this specific safety issue, sent by the US Housing authority on behalf of the current residence (the previous court unjustly chose to omit this evidence from its order without reasoning).

Her refusal to respond or investigate, enhanced with threatening verbal statements indicating immediate eviction should I pursue restoration was frightening and heeded without contest until such time as the family was removed from jeopardy. Not able to sustain a displacement condition without a federally subsidized contract on account of family size and needs, I could not jeopardize our rent increasing up to four times its current requirement to find housing of the like without federal subsidizes. During our attempts at saving funds for contract termination, the landlord continued to willfully reject any request for service made appropriately under her threats towards the tenants but continually and monthly accepted federal monies fraudulently misrepresenting the willful gross negligence in her abatement to the US housing and tenant safety concerns.

Furthermore, upon termination of the federal contract, the landlord willfully and without any consideration under the laws reviewed, withheld the entire deposit and only considered to write and date notification of unspecified damages 31+ days after termination, to be mailed or delivered appropriately several days thereafter. Previous evidence and defendant stipulation clearly establish a timeline outside the governing laws motioned and presented for review, yet unconstitutionally omitted from the courts reviewing order (1st, 5th, 8th and 19th amendment). Plaintiff request this court require the defendant answer definitively her position in acknowledging and abating her contractual obligations pertaining to the established federal contract. Also, plaintiff request this court require evidence or testimony pertaining to the conflict of interest further presented below. In the interest of constitutional protection, allow discovery to the exact extent of the defendants employment and/or volunteer commitment within previous and any future courts of interest.

JURISDICTION

Plaintiffs request this courts jurisdiction under US Code Title 28 - Part IV - Sec. 1491. This code pertaining reads in part;

> (a)(1)The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress...or upon any express or implied contract with the United States.
>
> (2)(a)The Court of Federal Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 10(a)(1) of the Contract Disputes Act of 1978, including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Acts.

US Code Title 13 - Part II - Chapter 211 - Sec. 3231 also provides allowances and reads in part;

> The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Also jurisdiction is requested under US Code 28 - Part IV - Chapter 85 - Sec. 1331

Petitioners contention of due process violations within, accompanying a breach of a federal contract position encompassing United States fair housing and civil rights violations relating directly to a government contract should warrant this courts jurisdiction when such contract was used as a means to carry out the purposes of the United States government.

Plaintiff also asserts a conflict of interest with the local jurisdiction in that the defending party and the presiding judge concurred their indications of co-worker status. Unable to gain even simple defendant stipulations without admonishment from the local reviewing court, this petitioner prays this court order removal and apply appropriate remedies necessary in aid of jury presentations and to protect or effectuate the due process and equal protection clause of the United States Constitution toward a federally governed and protected contract.

PLEADINGS

Plaintiff pleads for consideration and finding of facts to the following contentions:

1) In a federal contract provided specifically for the lawful expectation of fair housing, does the possible violation of over forty federal and local laws presented for judicial review reasonably establish a breach of said contract?

2) Does employment of the defendant by the county courthouse directly ruling on matters presented constitute a probable conflict of interest preventing the reasonable assurances provided for by amendments one, five, eight and fourteen to the United States Constitution.

3) Was the plaintiff afforded due process of the matters at law as requested in original filings and guaranteed under the 1^{st}, 5^{th} and 14^{th} amendment to the United States Constitution, during a small claims hearing requesting security deposit return?

4) Does evidence supporting a federal breach of contract substantiate further claims of United States Fair Housing violations under U.S. Code Title 42, Chapter 45, sub. Chapter II, sec. 3631 (b)(2)?

5) Does fraudulent and/or negligent misrepresentation in a federally binding contract unjustly perpetrate civil right violations against the recipient of governmental securities and should such violations as outlined in US Code Title 18, part 1, Chapter 13, sec. 246 be considered by a jury for punitive damages?

6) Under US Code Title 18, part 1, Chapter 47, sec. 1002, did any participant perpetrate or concur a reckless disregard for the truth in altering, avoiding or overlooking established facts presented as evidence by the plaintiff also including exhibit submissions objected to by the plaintiff with demonstration of the fraud or inaccurate accountability?

7) Does a federal government lease contract provide protection for the adherence of local and state laws even in the absence of repeated violation notifications? Also would stipulated notification be sufficient in asserting reasonable and contractual responsibilities?

8) Can the federal courts or a deciding jury force abatement to societal safety concerns when federal monies were accepted in return for the promised compliance of a government contract that was forcibly but properly terminated?

DISCOVERY BRIEF

Plaintiff respectfully moves the Court for guidance related to discovery matters that have previously and now recently arisen:

1. In a small claims hearing held on November 17, 2003, Plaintiff received correspondence from court alleging that defendant has been and is colleague to the local reviewing authority. Initially and verbally requesting an impartial third party consideration, the full extent of confliction possible to influence constitutional expectations cannot be justly or reasonably determined without foundation to the extent of the partnership.

2. In the previous hearing, defendant made no filings, written counter claims, motions or other responsive statements to any of the many contentions or allegations except to reverse her testimony over several inquiries allowed but limited by the trial courts discretion. Plaintiff wishes to pursue further this courts jurisdictional considerations if such be necessary and also to concisely present and have considered the federal questions contained here and within the established evidence but without evidential stipulations to even some of the simple relevant established facts only fortifies more supreme contentions on the basis of inconclusive testimony.

Therefore, plaintiff motions for discovery to the defendants position to several US and local code contentions in the matter most preferred by this court. That may be of depositional testimony electronically recorded or written definitive positions, both questioned directly for the defendants consideration.

Plaintiff also begs this court to allow discovery and review of previous evidence established in the earlier small claims hearing piquing the plaintiffs request now for this courts jurisdiction and reviewing authority. This small claims issue is currently under appeal with notification of this request for judicial review. Plaintiff documented many exhibits that include the U.S. housing authorities position on the safety concerns and the federal contract now under contention. Also this plaintiff request discovery and review of the electronic recording available under the Iowa 5th district small claims rules, rule 120. The fair contemplation of constitutional violations and reasonable consideration of the conflict of interest presented should compel reasonable efforts at safeguarding the established recorded evidence from prompt legal erasure.

Complications at acquiring original exhibits in a pending case need guidelines and clarification from this court concerning the appropriate remedy and discovery methods.

WHEREFORE, plaintiff requests this court allow a hearing concerning motioned discovery matters and prays the court enters a timely order allowing plaintiff discovery of the electronic record and other previous exhibits providing original documentation to the matters of interest.

RELIEF SOUGHT

Plaintiff seeks relief in this court, as all attempts at communication with the defending party have been fruitless with even the unfavorable conflict of interest in seeking reasonable compensation in the local courts. Plaintiff evidenced actual injuries contested including originally requesting security deposit return and penalties allowed under Iowa code along with minimal moving expenses (occurring from presented evidence asserting a constructive eviction) but to no avail.

In the lack of Constitutional protections, the plaintiff now request a federal jury trial to consider the actual damages and expenses in concurrence with federal and state laws, allowing when a contract has been breached the nonbreaching party is generally entitled to be placed in as good a position as he or she would have occupied had the contract been performed. This not only should include the finances needed to provide a duplicate but legally adequate residence during the landlords willful non-compliance but should also consider monies provided by myself and that provided on my behalf to sustain an unsafe and hazardous area.

Plaintiff can and wishes to further evidence calculations of actual damages in excess of ten thousand dollars, not including any possible punitive jury awards involving the plaintiffs civil rights contention. Also as a Plaintiff who has himself suffered injuries, I request allowance to assert the rights of other parties (babies - family members) who are also injured by the alleged unconstitutional acts. Generally, this is permitted where the third person in question would find it difficult to vindicate their own rights, or where the injury suffered by the Plaintiff adversely affects his relationship with 3rd parties, thereby resulting in an indirect violation of their rights. *Craig v. Boren.*

Respectfully,

Anthony V. DeLisle Sr.

Anthony V. DeLisle Sr.
3513 Belmar Drive
Des Moines, Iowa 50317-5842
(515) 263 - 8356
Date - December 1, 2003

CERTIFICATE OF SERVICE
The undersigned certifies the foregoing instrument was delivered by U.S. Mail to the concerning party listed below at their respective addresses on this 1st day of December, 2003 by A. DeLisle Sr.

Deliver to defendant:

Myers - 6554 Center St. DSM, IA 50312

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Anthony and Melissa DeLisle and family
3513 Belmar Drive
Des Moines, Ia. 50317
Plaintiffs,

vs.

Roberta Myers / Myers Properties
6554 Center Street
Des Moines, Ia. 50312
Defendant.

Case No. SC 376266

Request for security deposit return and conclusion of matters at law,

Our matter comes now before this honorable court in the hopes of considerable resolution to the interests presented for this courts finding of facts. This includes our contention that unreasonable efforts were used to withhold security deposit funds after the termination of all our responsibility involving residency at 1919 S.E. Bell Ave. in DSM, Ia.

Plaintiffs wish full return of this security deposit under the Uniform Residential Landlord and Tenant Act (URLTA), chapter 562A.12 (4) plus any further amounts that may be allowed under URLTA 562A.12(7). In the least, plaintiff wishes to present prudent evidence contrary to the yet unknown specifics of said security deposits retention.

Further issues presented for consideration:

1) Busted or severely **damaged water pipes** enclosed within the units walls. One area unseen contained damages to cause a uncontrolled, high volume flow of water from within the walls to saturate the entire kitchen area (the absorbent hallway carpet and underneath all the kitchens wooden cabinets), only when someone unwisely turns on the exterior faucet that is located out of view to the kitchen area. Unknowing of the consequence, this situation happened to different parties on several occasions during normal outdoor watering use and unforeseen childs play.

After immediate notification to the landlord of the potentially dangerous kitchen conditions, we were aggravated in disappointment with her refusal to adhere to contractual insurances, assuring that the property owner would take whatever precautions that were reasonably necessary under the circumstances to reduce the likelihood of injuries from defects in their property. "It is appropriate that the landlord who will retain ownership of the premises and any permanent improvements should bear the cost of repairs necessary to make the premises safe ..." (quoting Kline v. Burns, 276 A.2d 248, 251 (N.H. 1971)).

We contend the landlord was negligent in her refusal to perform routine maintenance repairs in a matter that adheres to the City of Des Moines, Iowa Municipal Code - Chapter 26 article 6 Sec. 26-988 (a), and that this negligence

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also of Article 2 Division 2 Sec. 26-78, posed undue safety concerns to the residents. Consider a case such as Montgomery v. Engel, 179 N.W.2d 478 (Iowa 1970), in which a duty was created by a housing code contained in a municipal ordinance. Also having gratuitously provided the outdoor faucet, we believe the landlord had a duty to exercise ordinary care in doing so. McCrady v. Sino, 254 Iowa 856, 865-66, 118 N.W.2d 592, 597 (1963); see also Case v. Sioux City, 246 Iowa 654, 660, 69 N.W.2d 27, 31 (1955) (holding that as a general rule a landlord is liable for negligence in making gratuitous repairs). The only reasonable option afforded us by the landlord was to move out, requiring contemplation also of loosing our position in the federal housing program.

2) Occurring from the lack of previous and continually improper exterior siding maintenance, several instances of seriously severe, unrelenting, troublesome and painful **pest infestations** went unreasonably ignored upon presentation for the landlords assistance. Again her careless attitude and threats of forcible eviction prevented this plaintiff from further pursuits, however reasonable, that created undo jeopardizing of my families current established position in the housing program.

We do wish now to hold the landlord liable for harm occurring from painful bee stings and numerous flea bites to persons on leased premises with the lessee's permission (family), and that the harm resulted from a condition of disrepair existing before the lessee has taken possession and the lessor was contracted to keep the property in repair. Long v. Jensen, 522 N.W.2d 621, 623 (Iowa 1994) . The residents/plaintiffs were again left with no reasonable resolution but to deal with these problems ourselves or to immediately vacate the premises. Plaintiffs argue the landlord breached the implied warranty of habitability.

Consideration of matters at law:

Plaintiffs now ask for both compensatory and punitive damages out of regard for safety and the good order of society as to not denigrate the importance of decent, safe and sanitary public housing. In the least, we wish consideration include a pro-rated portion of the water payments used to sustain the deteriorated and potentially hazardous plumbing conditions upon its presentation. We ask for this compensation under the Uniform Residential Landlord and Tenant Act, section 562A.23 (1(b)(c))

Plaintiffs also ask additional compensation for the treatments in three separate incidences of pest infestation (fleas, birds, and bees) that our landlord willfully refused to inspect, consider or adequately resolve in whole or part. We ask now for this courts finding of facts, only after all other reasonable efforts in retrieving even security deposit return has failed.

In consideration of the merits to our above requisition, this plaintiff requests due process in the evaluation of evidential stipulations that would merit the forgoing contentions to violations of the federal fair housing law, US code title 42 - chapter 45 - subchapter II - Sec. 3631, in that our landlord, whether or not acting under color of law and by threat of forcible eviction, willfully intimidated and interfered (b) (2) with affording this plaintiff and his family protection as to properly participate in the then established, federal housing program thus perpetrating Civil Rights violations under US code title 18 - part I - chapter 13 - sec. 246, in that insistence to suggestions of resident termination directly or indirectly threatened to deprive the tenants young family their current residing position in the federal housing program on account of its financially burdened affiliation.

These violations should support further requests for compensation, as also may be allowed under US code title 18. Interferences by our landlord that fall short of a physical exclusion but that nevertheless substantially interfere with our enjoyment of the premises, causing these tenants to reasonably consider vacating, should be actionable by this petitioner as a constructive eviction. The landlord's general breach of the covenant of quiet enjoyment, even if not "substantial" enough to constitute a constructive eviction, nevertheless should entitle us plaintiffs to damages above the rental deposit and its attributing amounts. A constructive eviction is similar to a partial actual eviction except that no actual physical deprivation takes place. Constructive eviction occurs when the landlord so deprives the tenant of the beneficial use or enjoyment of the property that the action is tantamount to depriving the tenant of physical possession. Barash, 256 N.E.2d at 710; Restatement (Second) of Property, supra; 2 Powell, supra 232[1], at 16B-27.

Many courts have extended the covenant beyond mere denial of actual possession. Pollock v. Morelli, 369 A.2d 458, 461 n.1 (Pa. Super. Ct. 1976); see Restatement (Second) of Property 5-6; 2 Powell, supra 232[1], at 16B-29. When the landlord knows or has reason to know of the existing dangerous condition, the landlord "to avoid liability" must act to protect those using the common area. Id.; see Bostian v. Jewell, 254 Iowa 1289, 1295-96, 121 N.W.2d 141, 144-45 (1963) (holding in a case involving an injury resulting from a slip and fall on ice in a common area, landlord has duty to use reasonable care to keep the premises reasonably safe; Restatement of Torts section 360 (1934)).

In brief, the plaintiffs contend to these violations in relation to our then current residence where our landlord habitually and willfully refused to consider her contractual obligations in providing a safe and healthy living environment. Her direct and repeated refusal to respond to safety and health concerns presented to her is the direct cause of our fair housing violation accusation. Considering this claim in the setting of a modern urban life, our home was the product of a financially and time consuming pursuit to establishment. To vacate and put my family or self out into the street, or jeopardize such cause when the landlord, not the tenant, is the real culprit of hardships, deprives tenants of a fundamental right without any real opportunity to defend. I would of also then lost the essence of my present controversy, gaining only the empty promise of possible litigation to some individual questions of this case.

Under communicated threat of displacement and aside reasonable methods of confrontation, plaintiffs believed that any formal complaint or insistent action would bring forth undue and foreseeable hardships from our landlord in any legal or reasonable retaliatory effort including cause for us to loose establishment and position in the federally funded housing program. This complicated program requires time and substantial financing in its establishment of residency and any request for or immediate loss of privileges by the landlord could of have extensively affected my family and their well-being. It is well established that "the landlord's conduct, and not his intentions is controlling" Blackett v. Olanoff, 358 N.E.2d 817, 819 (Mass. 1977); cf. Restatement (Second) of Property 6.1 (1976 & Supp. 1995) (not mentioning any requirement that the landlord intend to evict the tenant).

And finally, even if no intent was or could be procreated, courts have found a constructive eviction where a nuisance outside the leased premises, such as excessive noise from neighboring tenants, was attributable to, though not affirmatively undertaken by, the landlord. See, e.g., Blackett, 358 N.E.2d at 819; Gottdiener v. Mailhot, 431 A.2d 851, 854 (N.J. Super. Ct. App. Div. 1981). Even without any affirmative activity on the landlord's part, courts have found a constructive eviction where the landlord fails to perform a lease covenant, fails to perform statutory obligations, or fails to perform a duty that is implied from the circumstances. Sierad v. Lilly, 22 Cal. Rptr. 580, 583 (Ct. App. 1952) (deprivation of use of parking space impliedly included in the lease); Cherberg v. Peoples Nat. Bank of Washington, 564 P.2d 1137, 1142 (Wash. 1977) (landlord's failure to repair outside wall rendering it unsafe); see 2 Powell, supra 232[1], at 16B-29 to 16B-30.

The complexities, interconnectedness, and sheer density of modern society create many more ways in which a landlord may potentially interfere with a tenant's use and enjoyment of leased premises. Even without rising to the level of a constructive eviction and requiring the tenant to vacate the premises, such interferences may deprive the tenant of expectations under the lease and reduce the value of the lease, requiring in fairness an award of compensatory damages as such interference may also constitute a breach of the covenant of quiet enjoyment entitling the tenant to damages. Carner v. Shapiro, 106 So. 2d 87, 89 (Fla. Dist. Ct. App. 1958); see Restatement (Second) of Property 5 (changes in the physical condition of the premises which make them unsuitable for the use contemplated by the parties), 6 (conduct by the landlord, or by a third party under the landlord's control, which interferes with the tenant's permissible use of the premises); 2 Powell, supra 232[1], at 16B-27.

Therefore we bring now these contentions before this courts consideration for due process in findings of fact and to allow maximum compensation above and beyond actual damages in accordance with this courts determination of statue violations, pain and suffering and willful non-compliance.

Respectfully,

____
Anthony and Melissa DeLisle
3513 Belmar Drive
Des Moines, Iowa 50317
Date - October 6, 2003

Copies to:
Roberta Myers
6554 Center Street
DSM, IA. 50312

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Anthony Delisle, Melissa Delisle, Plaintiff(s)/Petitioner, Vs. Roberta Myers, Defendant(s)/Respondent.	Case No. SCSC 376266 **ORDER RE: Ruling on Small Claims**

On November 17, 2003 Plaintiff Anthony DeLisle and Defendant Roberta Myers each appeared pro se for trial.

The contested issue in this case is whether Plaintiffs are entitled to return of their $695 security deposit, although may other matters were raised by Plaintiff. Plaintiff's allegations of damages due to water leaks and pest infestations were not reported in writing to the landlord, as required by Iowa Code Sections 562A.21 and 562A.23. Therefore, the Court makes no findings or rulings on these issues. Further, the Court makes no findings or rulings on Plaintiff's claimed violations of federal housing law, as no evidence was presented as to the Court's jurisdiction over these matters. The Court FINDS as follows:

Plaintiffs rented property from Defendants from approximately August, 2000 until they vacated the property in late July, 2003. Plaintiff's Exhibit 7 is a letter from Scott Richardson, Housing Inspector for the City of Des Moines, dated August 1, 2000. The letter indicates the following conditions:

> Older carpet throughout unit;
>
> Not fresh paint in unit – nail holes, some areas touched up;
>
> Some vertical blind slats missing;
>
> Bathroom entry door split below lock set;
>
> Pink stains and cigarette burns at right front bedroom carpet;
>
> Bleach spots on carpet at right rear bedroom.

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The Move-In Inspection Statement of Unit Condition, signed by Plaintiffs and Defendant on July 31, 2002, indicates spots on the carpet in the living room and two bedrooms, scratches on tile in the kitchen and in the bathroom sink and on tile in the laundry room. The Inspection Statement also indicates doors on two bedroom were punched in on the inside of the door.

On July 24, 2003, Plaintiffs mailed to Defendant a Notice of Intent to Vacate, stating they would be out of the premises no later than August 31, 2003. They gave a forwarding address and indicated a desire to hear from Defendant if there were concerns about the return of the security deposit.

Plaintiffs moved from the property before August 31, 2003 and so notified Defendant. Defendant's husband was present when Plaintiff turned over the keys. He walked through the house and did not indicate any items to be repaired or further work to be done by Plaintiffs before turning over the property. Plaintiff presented a videotape showing the condition of the property.

Defendant took pictures of the property, showing dirt and damage.

On or about September 24, 2003, Defendant wrote a letter to Plaintiffs regarding return of the security deposit, stating in part, as follows:

> The following is a breakdown of your deposit at 1919 Bell……:
>
> 1. Installation and buying of new blinds. 2-LR 2 – BR 1 Kitchen. All new when you moved in. All new for new tenants….. $125.
> 2. Cleaning stove, refrigerator, bathrooms and floors …. $200.
> 3. Walls and ceilings …. $250.
> 4. Carpet and floors … new tile in the dining room … installation estimate of $150. The metal strip to carpet and tile $20. …. Shampooing of 3 BRs, hallway, stairs and LR and hallway $100…
> 5. Doors missing … found in garage … estimate to re-hang $75.
> 6. Busted smoke alarm and busted hardware.
> 7. What did you do to my doors? Unknown expense.
>
> Total $920.

Clearly, the house was not left in a clean and move-in condition. Under the lease, the landlord is entitled to retain all or part of the rental deposit to restore the dwelling unit to its original condition at the commencement of the tenancy, normal wear and tear excepted. This unit's condition at the commencement of the tenancy was not good, according to the Inspection Statement. Also under the lease, the landlord must attempt to reduce the cost of any damages or expenses arising from the tenant's noncompliance with the rental agreement. No evidence was presented which indicated the landlord attempted to reduce the costs by telling Plaintiff to shampoo the carpets or clean the refrigerator or stove or make other repairs before turning over the keys. However, these needs were so obvious that Plaintiff should have done this cleaning.

Plaintiff is entitled to return of a portion of the rental deposit. Defendant presented satisfactory evidence of the need for general cleaning throughout the hose and for installation of new tile in the dining area and a new metal strip between the carpet and tile. Therefore, Defendant is entitled to retain a total of $200 for general cleaning, $150 for new flooring in the dining area and $20 for a new metal strip, as well as $100 for shampooing carpet, for a total of $470. Defendant shall return the balance of $225 to Plaintiffs.

IT IS THEREFORE ORDERED that Judgment is entered in favor of Plaintiffs in the amount of $225, plus Court Costs.

IT IS FURTHER ORDRERED that Defendant's counterclaim is dismissed.

SO ORDERED this 21st day of November, 2003.

ARTIS I. REIS, JUDGE
Fifth Judicial District of Iowa

Clerk: __J X C __U __X

Copies to:
Anthony Delise
Melissa Delisle
3513 Belmar Drive
Des Moines, Iowa 50317

Roberta Myers
6554 Center St.
Des Moines, Iowa 50312

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Anthony and Melissa DeLisle and family 3513 Belmar Drive Des Moines, Ia. 50317 *Plaintiffs,* vs. Roberta Myers / Myers Properties 6554 Center Street Des Moines, Ia. 50312 *Defendant.*	Case No. SC SC376266 *Notice of APPEAL* *of Order dated Nov. 21, 2003.*

Plaintiffs move now for appeal of the small claims division ruling on cause of due procees and equal protection violations of the United States Constitution, specifically the 1st, 5th, 8th and 14th amendments, along with other considerations involving the small claims action saught by the plaintiffs in this proceeding.

Petitioner, appellant and original plaintiff now request appeal with the appropriate allowance of due process in discovery and other motions allowed in substantiating the defendants claims, exhibits and testimony. Plaintiff request review, and again conclusions of laws that were initially presented in the original paper filings but not commented on or considered and even seemly avoided in the small claims order.

On October 6, 2003 the plaintiff filed and served papers requesting a security deposit return under Iowa code title 14, chapter 562A.12 (4) and (7). At the hearing both parties agreed to the tenants moving out and returning the keys on Aug. 23, 2003. The landlord then agreed in the presence of the court and amazingly submitted proof in writing that no notice was given or considerd to the residence until 31+ days after resident termination. The hand written document was not written and dated until 31+ days after termination and that is without the reasonable consideration of delivering the unspecific statement to the residents that was not mailed, but hand delivered some five+ days thereafter.

In attempts to evidence the defendants willfulness, the plaintiff attempted to have the court review evidence related to the reasonable suggestion of a small claims constructive eviction contention. As this plaintiff asserted objections, including facts establishing the fabricated and gross misrepresentations of the truth towards the defendants exhibits (pictures of move-out condition) submitted without reasonable authentication, the judge would not allow the plaintiff further, reasonable inquiries to the defendants position and abruptly concluded the case, terminating the due process in pleading reasonably my entire case and establishing evidence for all parties and the record.

The order arising from the small claim action indicates references only to Iowa code sections 562A.21 and 562A.23.

1) These laws construed independently by the reviewing court clearly leaves open to the plaintiff the option and consideration of conformance as they both read literally;

(562A.21) ...the tenant may elect to commence an action under this section...

(562A.21) ...the tenant may give written notice to the landlord...

No indication of legal insistence is justly provided for under such laws and the plaintiff request redress in conclusions of law originally presented and constitutionally protected.

2) Evidence electronically recorded in its entirety after the swearing in should show the landlord initially claiming ignorance to the water damage and safety issues presented earlier to her and now on review in small claims. When allowed by the judge, plaintiff presented evidence and submitted as exhibit one, a written letter sent to the landlord on the residence behalf, requiring her to fix and repair the plumbing damage that violated the local codes. The defendant then purgured her previous statement and now admitted to being aware of the plumbing damage at the time the letter was sent but also now stipulated that she made no effort or attempt at repairing the deficiency. This appellant contends that plaintiff exhibit 1 contradicts the judges contention in the ordered ruling that no written notice was given to the landlord relating the requirement to fix this specific safety issue.

3) Furthermore, plaintiff also takes unrest in realizing the courts attempt to use the municipal laws in an obvious attempt to diminish the owners responsibility in correcting the problem, still in existence today as the evidence suggests. I feel discouraged that the court would easily accept the retraction of previous defendant testimony easily and then construe laws on the defendants behalf to diminish the owners responsibility in correcting a known fire and safety issue.

Using a municipial code to lessen the owners responsibility, including that of emergency extermination in uncontrollable pest infestations because of inadequate maintenance seems grossly unfair and completely contrary to the laws that specifically guard against it...

A) City of Des Moines Iowa Municipal Code, Chapter 26, Article I, 26-4 (g)(2)

> The building... plumbing...codes shall not be construed to believe from or lessen the responsibility of any person owning, operating or controlling any equipment or structure regulated by such codes for damages...

B) City of Des Moines Iowa Municipal Code, Chapter 26, Article 6, Division 4, Section 26-1162(b)

> This article and the plumbing code shall not be construed to relieve from or lessen the responsibility of any person owning, operating or controlling any equipment or structure regulated in this article for damages...

In the interest of justice, I request this court acknowledge my appeal and allow the discovery of all evidence contained within the small claim proceedings, including the complete electronic recording required under Iowa 5th district small claims rules, rule 120, to be preserved immediately for further constitutional reviews. I request this recording be also made available for discovery in future trial preparation.

Also, in agreement that the rental unit was not in appropriate condition at the time of aquirement, I do implore the court to elaborate on it's ruling indicating the plaintiffs should of obviously cleaned better. Video taped evidence submitted by the plaintiffs and indicated as reviewed by the judge showed the entire residence, inside and out. Vacuumed extensively with toilets soaking in bleach, even all the walls indicated being wiped entirely clean, as I attest, from even the existence of dust. Plaintiffs take offence to the courts order of obvious knowledge and request any example, reasonably authenticated that may suggust anything other then reasonable wear and tear during our move out inspection.

Sighting jurisdiction and consideration to a conflict of interest presented at the small claims hearing laying foundation for constitutional concerns, plaintiff wishes to advise and/or request leave for postponement from this court to allow my request for federal review of the government contract, submitted as evidence and relied on as foundation to the included claims. I will plead and motion the federal court to render jurisidiction and establish control of the proceedings providing for proper discovery of the small claims hearing that includes electronic evidence pertaining to a federal breach of contract lawsuit.

In light of unforeseeable yet possible rejection from the federal court, I request this court grant the appropriate review and allow reasonable discovery of evidence and testimony from the previous hearing.

Respectfully,

Anthony V. DeLisle Sr

Anthony V. DeLisle Sr.
3513 Belmar Drive
Des Moines, Iowa 50317
(515) 263 - 8356
Date - December 1, 2003

CERTIFICATE OF SERVICE
The undersigned certifies the foregoing instrument was delivered by US Mail to the concerning party listed below at their respective addresses on this 1st day of December, 2003 by A DeLisle Sr.

Deliver to defendant:

Myers - 6554 Center St. DSM, IA 50312